

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**CYNTHIA MINAFEE,
CONSWEYLA MINAFEE,
LINDSEY RUDOLPH for YAHAVEN PYLANT,**

Plaintiffs,

v.

No.

**BERNALILLO COUNTY BOARD OF
COMMISSIONERS, a governmental entity
of the State of New Mexico, Sheriff Manual
Gonzales, Bernalillo County Sheriff's Department,
Deputy Sheriff LEONARD ARMIJO of the
Bernalillo County Sheriff's Department,
Individually, and Deputy Sheriff PATRICK RAEL
of the Bernalillo County Sheriff's Department,
individually.**

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Section 1332, Defendant Bernalillo County Board of Commissioners, by and through its attorneys, SaucedoChavez, P.C. (Frank T. Apodaca and Brian Griesmeyer), hereby gives notice of the removal to this Court of the civil action filed in the Second Judicial District Court for the State of New Mexico, County of Bernalillo, Cause No. D-202-CV-2020-03924, and as grounds therefore states:

On July 6, 2020, Plaintiffs filed their Complaint for Violations of the New Mexico Constitution and Tort Claims (*hereinafter* referred to as the "Complaint") with the Second Judicial District Court. A Court-endorsed copy of the Complaint is attached hereto as **Exhibit A**.

This Notice of Removal is timely as Plaintiff has not served Defendant Bernalillo County Board of Commissioners so the 30 day time period has not begun. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354-355, 119 S. Ct. 1322, 1328–29, 143 L. Ed. 2d 448 (1999);

Madrid v. Bd. of Cty. Commissioners of Dona Ana Cty., No. CV 12-73 GBW/WPL, 2012 WL 13080172, at *1 (D.N.M. Mar. 8, 2012) (“The thirty-day period in which to remove a case does not begin until a complaint is properly served.”). Removal is also procedurally proper under 28 U.S.C. § 1441(b)(2) because no Defendants have been served. Finally, under 28 U.S.C. § 1446(b)(2)(A), no other Defendants are required to join in removal because no other Defendants have been served.

Pursuant to 28 U.S.C. § 1446(d), copies of the Notice of Removal will be promptly given to all adverse parties and a copy of the Notice of Removal will be filed with the Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico.

The Court has original jurisdiction over the claims stated against Defendant in this case pursuant to 28 U.S.C. § 1332(a)¹ because the amount in controversy exceeds \$75,000, and there is complete diversity of citizenship. Plaintiffs are not citizens of New Mexico as of the time of filing the complaint and are not domiciled in New Mexico. Defendant is a political subdivision of New Mexico, and no other Defendants share citizenship with any Plaintiff. Based on damages Plaintiffs allege in the Complaint, Plaintiffs’ claims support an amount in controversy in excess of \$75,000. *McPhail v. Deere Co.*, 529 F.3d 947, 955 (10th Cir. 2008).

Pursuant to Rule 81.1(a) of the Local Rules of the United States District Court for the District of New Mexico, Defendant will, within twenty-eight (28) days, file a Notice of Filing of State Court Record and copies of the pleadings filed in the Second Judicial District for the State of New Mexico, County of Bernalillo, in Cause No. D-202-CV-2020-03924.

¹ Plaintiffs plead and style all Counts in their Complaint as claims brought under New Mexico State law. Nonetheless, Plaintiffs therein allege violations of the federal constitution, to include allegations made at Paragraphs 125 (Fourth Amendment) and 136 (First and Fourth Amendments). Accordingly, to the extent Plaintiffs are pleading federal claims, removal predicated on federal question jurisdiction under 28 U.S.C. § 1331 is appropriate as well, separate and apart from removal predicated on diversity jurisdiction under 28 U.S.C. § 1332 being procedurally proper under 28 U.S.C. § 1441(b)(2).

Respectfully submitted,

SAUCEDOCHAVEZ, P.C.

By: /s/ Frank T. Apodaca

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***Attorneys for Defendant Bernalillo County Board
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IT IS HEREBY CERTIFIED that on July 9, 2020,
the foregoing was sent by email to the following:

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/s/ Frank T. Apodaca

Frank T. Apodaca